IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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Sunder Devi Vs. Secretary, Ministry of Home & Ors.

S.B. CIVIL WRIT PETITION NO.408/2007.

Date of Order :::: 10th October 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. B.L. Bishnoi, for the petitioner.
Mr. Rameshwar Dave, Dy.G.A., for the respondents.

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BY THE COURT:

By way of this writ petition, the petitioner, claiming herself to be the wife of deceased pensioner Genda Das, has questioned denial of family pension to her.

The petitioner has averred in the writ petition that late Shri Genda Das joined the services in RAC on 23.04.1966 and got discharge from service on 31.07.1990 after serving for a period of 25 years, 11 months and 17 days; that he got pension under PPO No.45332/90-91 till his death and soon after his death, the pension payment was stopped. The petitioner has alleged that Genda Das got married to one Laxmi Devi who died on 12.05.2003; that after her death, the petitioner solemnized 'Nata Marriage' with Genda Das as his

first wife had died issueless and there was none else in the family to support. The petitioner has further referred to some proceedings in community panchayat in that regard and has placed the same on record as Annexure-2; and has alleged that Genda Das died on 17.12.2005 leaving behind the petitioner alone.

According to the petitioner, at the time of discharge from service Genda Das submitted his pension papers in the Department affixing joint photograph of himself and his first wife Laxmi Devi; and in his service record also, Laxmi Devi was mentioned as nominee who died before Genda Das on 12.05.2003; but such entry continued till the death of Genda Das as he and the petitioner both were illiterate and did not know the consequences of such entry in the record.

The petitioner has stated her grievance in the manner that after the death of Genda Das she submitted pension papers to the respondent No.2 for grant of family pension as wife of the deceased pensioner Genda Das but her prayer was rejected on the ground that such claim was not made during the life-time of Genda Das nor her name was stated in the nomination form; and, therefore, pension could not be granted treating her as second wife. According to the petitioner, the reason for denial of family pension was untenable; that she is an illiterate lady from Scheduled Caste

community and was not aware of the rules and the regulations; that Genda Das was getting his pension throughout his life till he died on 17.12.2005 and, according to the rules, the widow of pensioner being entitled to get the pension, the claim of the petitioner could not have been denied; that the respondents have not considered the fact of 'Nata Marriage' of the petitioner with Genda Das and mere not mentioning of her name in the nomination form was of no effect.

During the course of submissions, learned counsel for the petitioner has also pointed out the incongruous stand taken by the respondents in their reply inasmuch as it has been stated in paragraph 3 of the reply that after death of Shri Genda Das, family pension was being provided to her wife Laxmi Devi and the family pension was stopped after her death. Learned counsel submitted that having regard to the overall facts and circumstances of the case where the Department itself has been labouring under misconception, there is no reason to deny the petitioner of her legitimate claim of family pension and there is nothing on record to rebut the prima facie evidence adduced by the petitioner of her 'Nata Marriage' with the deceased pensioner.

Refuting the submissions on behalf of the petitioner, learned Deputy Government Advocate has submitted that there is no cogent evidence available on record to consider the

petitioner a legally wedded wife of the deceased pensioner and the document Annexure-2 does not prove any such fact of her marriage. Learned Deputy Government Advocate submitted that of course there had been some incongruity in the reply submission as stated in the paragraph 3 of the reply but the fact stand clarified in paragraph 4 of the reply wherein it has been specifically pointed out that according to the record of the respondents, the nominee for family pension was Smt. Laxmi Devi who died in the year 2003 before the death of the pensioner. During the course of submissions, learned Deputy Government Advocate has also placed on record a copy of the application dated 15.07.2006 as made by the petitioner for allowing her family pension wherein she claimed that Genda Das had two wives, i.e., Laxmi Devi and the petitioner (Sunder); and that Genda Das had taken her (the petitioner) as second wife on 31.03.1991 according to the family customs. Learned Deputy Government Advocate submitted that the claim as made by the petitioner by way of the said application stands squarely at contradiction to the claim as made in this writ petition that Genda Das contracted 'Nata' with her after the death of Laxmi Devi.

Having given a thoughtful consideration to the rival submissions and having examined the material placed on record, this Court is clearly of opinion that this writ petition

remains totally bereft of substance and deserves to be dismissed.

The claim of the petitioner for family pension is fundamentally based on the fact that the deceased pensioner Genda Das contracted 'Nata' marriage with her. There is no evidence available on record to even remotely find any substance in such allegation. The undated document Annexure-2, said to have been written by the son of the petitioner, is neither here nor there; and the said document by no stretch of imagination be treated to be a document in proof of the marriage relationship of Genda Das with the petitioner. The entire of the contents of the said undated document as stated in the typed copy filed with the writ petition reads thus:

> "मैं अशोक पुत्र भंवरदास जात रा खेती लिखत नामा एक जात में बैठकर दे रहा हूं कि गेन्दादास पुत्र फूसाराम जात गुन्दी को कि मेरी माँ सुन्दर के झगडे के बाबत् में मैं अशोक व मेरा काका नारायण व मेरा दादा सावरदास यह हम सब खेती परिवाहर लिखके दे रहे हैं कि मेरी माँ सुन्दर का झगडा बिना पैसा ठके दे रहे है सो यह सही है । हम खेती जात गेन्दादास झगडे के बाबत् में कभी भी उजड दावा नहीं करेंगे अगर करेगें तो जात में व राज दरबार में हम झूठे पडेगे । यह लिखित बगर नशे पते मैं अशोक मेरा काका नारायणदास समस्त जात में बैठकर लिख दिया जो सही है ।"

Apart from the fact that the contents of the document cannot be taken in proof of marriage relationship; the significant fact is that the said document is not at all signed by Genda Das. Even if the said document be taken to have

been written stating about some proposition of some relationship of Genda Das with the petitioner, the document is at the best an admission by the petitioner and her family in their own favour. The respondents cannot be expected to act upon the said document so as to allow family pension to the petitioner.

It is significant to notice that the averments taken in this writ petition are contrary to those stated by the petitioner to the Department concerned while making a claim for family pension. In whatever manner they have been stated, the contents of paragraphs 6 and 7 of the said application dated 15.07.2006 could be reproduced as under:-

> "गेंदादास लक्ष्मीदेवी व सुन्दर दो पत्नीया रखते थे । गेंदादास की मृत्यु दिनांक 17-12-2005 को व लक्ष्मी की मृत्यु दिनांक 12-05-2003 को हो चूकी है ।
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> गेन्दादास ने जीवित रहते समय मुझ सुन्दर से सामाजिक रिती अनुसार नाता कर मुझे दूसरी पत्नी के रूप में अपनाया किन्तु पी पी ओ मे पत्नी का नाम लक्ष्मीदेवी नामित होने व उसकी गेन्दादास के जीवित रहते मृत्यु होने की दशा मे मैं सुन्दर देवी पारिवारिक पेंशन से वचिंत हूं । सुन्दरदेवी के जीवित रहते गेन्दादास ने मुझ से 31-3-1991 को सामाजिक शादी - रिती रिवाज से नाता की है ।"

On the other hand, the averments in paragraph 4 in this writ petition read, verbatim, as under:-

> "That the Genda Das got married to one Laxmi Devi who died on 12.05.2003 and after her death the petitioner solemnized nata marriage with Genda Das . The first wife Laxmi Devi died issueless and Genda Das was widower at the time of solemnized the nata with petitioner as there

> was no one to support in the family as he was all alone where he need a support of a female to maintain his house in these circumstances the petitioner got nata with Genda Das in this regard a community panchayat took place and there was a written consent obtained by petitioner and Genda Das from community person and son of petitioner from her earlier husband is submitted herewith and marked as **Annexure-2.**"

Obviously, the petitioner has taken shifting stands regarding her alleged marriage relationship with Genda Das. There is nothing on record to find that the petitioner had been the wife of the deceased pensioner Genda Das; and on the contrary he had nominated his wife Laxmi Devi as the nominee for receiving family pension. Unfortunately, Laxmi Devi had expired before Genda Das but for no other nomination being available; the Department cannot be said to have erred in refusing the claim for family pension as made by the petitioner.

It is of course true that the respondents have not taken care while submitting a reply in this matter and the averment as taken in paragraph 3 stating as if after the death of Genda Das, family pension was being allowed to his wife Smt. Laxmi Devi happens to be an averment taken in an absolutely irresponsible manner and stands at contradiction to the averments taken in paragraph 4 of the reply. It is required of the respondents to be careful while making reply submissions. However, for such error on the part of the respondents, the

fundamental factual aspect is not altered that Laxmi Devi, the wife of Genda Das and the nominee for family pension, had died on 12.05.2003, before Genda Das who died on 17.12.2005. In any case, such incongruous submissions in the reply do not in any manner support or enhance the cause of the petitioner that remains fundamentally bereft of any factual or legal basis.

Learned counsel for the petitioner made an alternative submission that the petitioner may be permitted to obtain succession certificate and the respondents might consider the matter if such certificate is produced. From the material, whatever, placed on record, this Court is unable to countenance any such proposition or to make any comment in this writ petition that appears to be fundamentally bereft of substance. For being not inclined to exercise extraordinary writ jurisdiction, this Court does not consider it appropriate to make any comment indicative of extending any liberty to the petitioner to take up another round of litigation so far the present issue is concerned.

The petition fails and is, therefore, dismissed. However, in the circumstances of the case, the parties are left to bear their own costs.

(DINESH MAHESHWARI), J.

[Mohan]